

PHASE I

BRAC BUSINESS INITIATIVE (BBI) OBSERVATIONS

The Fort Meade Regional Growth Management Committee

July 2010

EXECUTIVE SUMMARY

In fiscal year 2009, the Department of Defense (DOD) spent nearly \$384 billion on contracts, over 70% of total government contract opportunities. The federal government spends more defense contract dollars in Maryland on a per capita basis than all states with the exception of Virginia. These figures indicate that defense contracting is vital to the health of Maryland's small business community. The growing importance of defense contracting in the Fort Meade Region is further demonstrated by the arrival of the three Base Realignment and Closure (BRAC) agencies, the establishment of US Cyber Command and the relocation of defense contractor support.

With this regional economic growth generating potential opportunities for small and minority businesses, the question became: how best can these businesses connect with these defense-related opportunities? In 2009, Congressman Elijah Cummings, Howard County Executive Ken Ulman, and Howard County Community College President Kate Hetherington developed shared interests in this subject. In response to these interests, the Fort Meade Regional Growth Management Committee (RGMC) established the BRAC Business Initiative (BBI) to assist small and minority businesses in taking full advantage of these growth related opportunities. Because the RGMC did not have the resources to address the specific contracting needs of each small business in the region, it developed a unique alternative strategy. The RGMC acted to increase the effectiveness of small business contracting efforts by improving the clarity and quality of the contracting information required for these businesses to win defense contracts.

Finding credible documented information on the defense contracting experience of small businesses in the Fort Meade Region proved fruitless. Most available information was anecdotal. With this outcome, the RGMC determined that the most effective method of documenting the defense contracting environment in and around Fort Meade would be to implement an internal development effort. This strategy drove the development of the BBI and its mission:

The BRAC Business Initiative will actively engage in defining the environment, identifying the obstacles and documenting actions required by small businesses desiring to do work with the Department of Defense and/or supporting contractors. The BBI will provide the small and minority businesses of the Fort Meade Region with a living "terrain map" that clearly illustrates the opportunities and the obstacles imbedded in the Fort Meade contracting environment.

The BBI consists of three one-year long phases. Phase I has just completed and the results are the basis for this report. In order to identify and document the Fort Meade Region defense contracting environment, Phase I consisted of tracking and documenting the actions of 20 "Test Companies" as they traversed through the contracting process.

Phase I experiences yielded one strong theme and multiple observations, all of which contribute to the mosaic of this regional contracting environment. The premise of the

theme is: small business success depends on the availability of critical resources (time, money, people and information) in order to successfully meet contracting requirements. The theme is: the complexity of the Fort Meade defense contracting environment, in large part caused by the classified nature of agency and contractor missions, significantly increases the resource demands on already strained small and minority businesses.

Selected Phase I Observations:

- ❖ While competency, credibility and quality are driving factors in awarding defense contracts, it appears that the current contracting culture may rely too heavily on personal connections. In comparison to prime contractors, small businesses are at a major disadvantage competing in this networking environment.
- ❖ The initial steps of positioning a small or minority business to qualify for defense contracting are straightforward and without complication. Identifying defense contracting opportunities was also not a problem, but obtaining a defense contract was generally difficult.
- ❖ The General Services Administration's requirement for businesses to sustain a specific level of sales to stay on their GSA Schedule puts additional pressure on small businesses. Reapplication is a resource intensive action.
- ❖ Small businesses can spend time and money preparing bid proposals with a large prime contractor and then never receive any part of the work once the contract is won.
- ❖ While the National Security Agency's Acquisition Resource Center (NSA's one-stop source for acquisition information) was praised by Test Companies, these same companies had concerns regarding NSA's Provisional Industrial Security Approval Program and its effectiveness in aiding small businesses to obtaining required clearances to win NSA contracts.
- ❖ The state of Maryland is projecting that it will meet its goal of awarding 25% of its government contracts to small business and Test Companies asked why the federal government can't achieve the same results.
- ❖ Under new law, the U.S. Department of Veteran Affairs began greater use of limited competition contract awards (sole-source and set-aside) to surpass small business contracting goals and Test Companies asked why DOD can't achieve the same results.

These observations are only the initial effort to document the defense contracting environment of the Fort Meade Region. As the BBI moves into Phase II, the program will take a closer look at the issues identified in this Phase I report.

PHASE I

BRAC BUSINESS INITIATIVE OBSERVATIONS

I. INTRODUCTION

The United States Federal Government is the world's largest purchaser of goods and services, with purchases totaling over \$500 billion per year.¹ President Barack Obama recently stated that “particularly during these bad economic times, small businesses must be able to participate in the Nation's economic recovery, including businesses owned by women, minorities, socially and economically disadvantaged individuals, and service-disabled veterans of our Armed Forces. These businesses should be able to compete and participate effectively in federal contracts.”²

The BRAC Business Initiative (BBI) is taking a unique look through the perspective of twenty small and minority businesses (Test Companies) to see if they are able to “compete and participate effectively” in federal defense contracting. With the arrival of Base Realignment and Closure (BRAC) and the additional contracting opportunities it could bring to the Fort Meade Region, the Fort Meade Regional Growth Management Committee (RGMC) launched the BBI in an attempt to document the defense contracting environment.

In fiscal year 2009, the Department of Defense (DOD) spent nearly \$384 billion on contracts, over 70% of total government contract opportunities.³ This paper will document the defense contracting issues that have directly impacted BBI Test Companies as they pursued opportunities during their tenure in the BBI. By reporting on the common contracting experiences of Test Companies, this paper will provide a better perspective of the overall defense contracting environment for small businesses; particularly for those businesses in the Fort Meade Region.

DOD acknowledges the important role small business plays in the contracting process. DOD even has aspirational goals to ensure that small businesses, including firms owned by women, minorities, economically disadvantaged individuals, and service-disabled veterans, have fair access to contracting opportunities. But Test Companies revealed that small businesses are competing in a contracting system that appears tilted against them and their contemporaries who are outside of the system. Through the collective experience of these Test Companies, this paper will document the equitability of the defense contracting system to small companies and lend additional transparency to the situations these businesses experience.

¹ The White House; *Presidential Memorandum on the Interagency Task Force on Federal Contracting Opportunities for Small Businesses*; April 26, 2010.

² *Id.*

³ Government Accountability Office; *Defense Acquisitions: Managing Risk to Achieve Better Outcomes*; GAO-10-374T; January 20, 2010.

II. PAPER METHODOLOGY

This paper reflects a collection of observations from the current defense contracting environment. From January 2010 to June 2010, BBI staff documented the defense contracting experience of 20 “Test Companies” within the BBI program. BBI staff conducted these observations through bi-weekly surveys and bi-monthly interviews of the Test Companies.

Overview of the 20 BBI Test Companies

1-20 years in business

2-200 employees

*100k–25million in annual
sales*

Certifications:

CCR	18
GSA	7
MBE	12
8a	4
SBA	3
WOSB	2
SDB	5

The Test Companies are a cross-section of small and minority businesses that are currently engaged in defense contracting throughout the Fort Meade Region. There is a wide spectrum of Test Companies to reflect the diverse set of companies in the general federal contracting population. Some of the Test Companies have successfully secured defense contracts prior to their participation in the BBI, while other Test Companies have never successfully obtained a defense contract.

The BBI acknowledges the small sample size of 20 Test Companies. Therefore, while the BBI staff believes the Test Companies are a balanced representation of the small and minority businesses in the defense contracting community at-large, observational data reported on the Test Companies is **not statistically significant**. This prompted BBI staff to back up observations with independent research. The independent research supports that the experience of Test Companies is not isolated or on the peripheral of defense contracting.

There are hundreds of issues that impact small and minority defense contractors. As a result, the BBI had to take a unique approach to isolate the key issues that would compose this paper. All the topics covered in this paper are an outgrowth of Test Company observations (surveys and interviews). There were many concerns raised by Test Companies during the observation process, but there was set criteria for a subject matter to be addressed in this paper. If three or more Test Companies experienced a particular issue during the six months of observation then that issue is directly addressed in this paper. Topics were never picked based on a particular agenda (i.e. personal interest or advocacy). With the exception of the first three sections of this paper, which set the stage for topics covered in this paper, the contracting experience of Test Companies was the sole driving factor for the subjects raised in this paper.

This paper only maps out the experience of Test Companies; it does not assess their experiences or directly recommend changes based on their experience. This paper lays out the common experience of Test Companies for the benefit of all the small and minority defense contractors within the BBI program. While this paper is not an advisory tool, the

BBI staff believes it will help give small and minority businesses improved perspective on the vast defense contracting landscape.

As the BBI “maps” the current defense contracting landscape, it should be emphasized that this paper only provides a portion of the map that will be expanded through future phases of work. This is the first step in identifying the defense contracting environment. This phase of work with Test Companies was a pilot process; phase one of two more phases to come. As this paper takes a broad perspective in laying out the environment, future papers will hone closer into key issues that arise through the future experiences of BBI Test Companies.

III. CONTRACTING IN MARYLAND AND THE FORT MEADE REGION

The federal government contributes significantly to Maryland’s economy, especially given its proximity to Washington, DC and the multitude of federal institutions, including Fort George G. Meade, within the State. In fiscal year 2007, the federal government expended \$70.6 billion in Maryland.⁴ The federal government spends \$12,569 on a per capita basis in Maryland, which is nearly 50% greater than the national per capita average of \$8,339.⁵ This means the federal government spends more contract dollars in Maryland on a per capita basis than all states except Virginia and Alaska.⁶ Congressman Elijah Cummings, a primary sponsor of BBI, states:

As our nation digs its way out of the current economic downturn, small businesses will be vital to our efforts. Small Businesses will be the mobilizing force behind our economic growth. We have a responsibility to ensure that there are resources dedicated to helping small businesses navigate the procurement process to create an opportunity for a win-win situation.⁷

The substantial influence of the federal government on Maryland, coupled with the arrival of BRAC, has prompted the RGMC to start the BBI to lend more transparency to the current federal defense contracting environment. Senator Benjamin Cardin noted:

With the Base Realignment and Closure (BRAC) Commission recommendations, we now have in our backyard a tremendous opportunity to change and redefine the way the federal government deals with small and minority business contractors for the better not only here but nationally. Our region is uniquely poised to benefit from the billions of dollars that will be deposited here in the form of construction, service and product procurement contracts that will fuel BRAC’s expansion...The stakes here are high and we want DOD to succeed.⁸

⁴ Robert J. Rehrmann and Theresa M. Tuszynski; *Impact of the Federal Government on Maryland’s Economy*; Maryland Department of Legislative Services, Office of Policy Analysis; January 2010.

⁵ *Id.*

⁶ *Id.*

⁷ Office of Lt. Governor Anthony G. Brown; *Lt. Governor Brown, Congressman Cummings, Congresswoman Edwards Host Minority Business Enterprise Conference at Bowie State University*; Press Release; March 20, 2009.

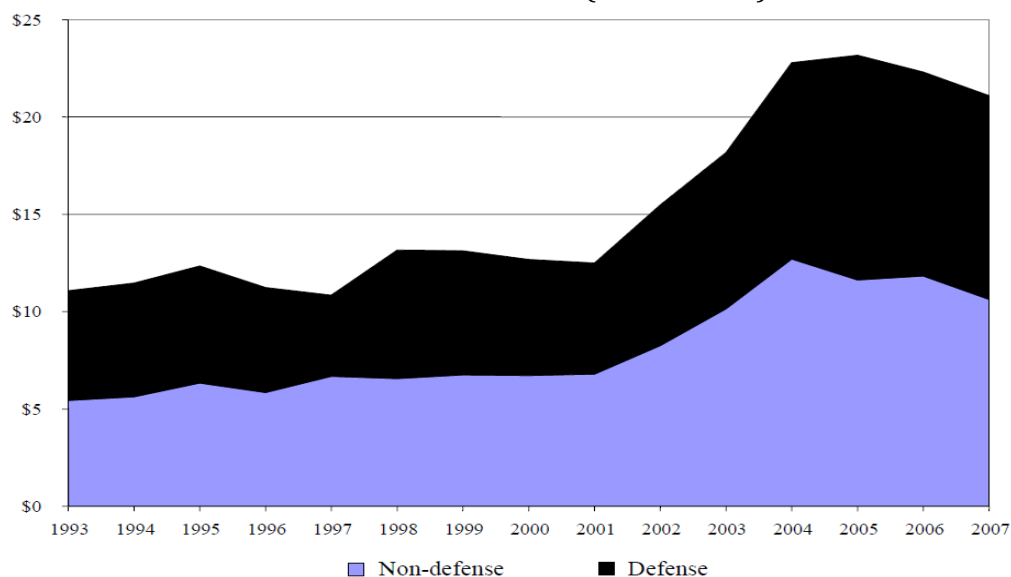
⁸ Cardin, Benjamin; *Senate Floor Statement on Access to Federal Contracts: How to Level the Playing Field*; October 29, 2007.

The U.S. Census divides federal expenditures into five categories – retirement and disability payments, other direct payments, grants, procurement contracts, and salaries and wages. In fiscal year 2007, procurement contracts were 30% of the total; the largest expenditure in Maryland.⁹ This federal contract expenditure is only increasing, with a 3.3% annual increase from 1997-2007.¹⁰

The \$21 billion in federal contracts disbursed in Maryland during fiscal year 2007 generally reflects Maryland's active defense industry. In fact, military contracting has comprised roughly half of all contracts in recent fiscal years. Many of these contractor dollars are to large defense contractors such as Lockheed Martin, Northrop Grumman, BAE Systems, Textron, and Raytheon. For example, typical large-scale military production in fiscal year 2007 included Northrop Grumman's radar systems, various missile defenses and systems engineering, and Textron's contracts to produce the RQ-7 Shadow unmanned aerial vehicles for the Iraq and Afghanistan wars.

While the large contractors described above comprise a significant portion of the federal contract dollars disbursed in Maryland, these top ten contractors received only 40% of all federal contracts in the State in fiscal year 2007.¹¹ Therefore, we can deduce that the impact of federal contracting is not limited to these large contractors. A total of 80,987 federal contracts were awarded to 13,277 contractors in Maryland during fiscal year 2007. The median value of a contract during this time was \$26,100 and 90% of all contracts were under \$420,000.¹²

Maryland Federal Procurement Contracts
Fiscal Years 1993-2007 (\$ in Billions)



⁹ Robert J. Rehrmann and Theresa M. Tuszynski; *Impact of the Federal Government on Maryland's Economy*; Maryland Department of Legislative Services, Office of Policy Analysis; January 2010.

¹⁰ *Id.*

¹¹ Robert J. Rehrmann and Theresa M. Tuszynski; *Impact of the Federal Government on Maryland's Economy*; Maryland Department of Legislative Services, Office of Policy Analysis; January 2010.

¹² *Id.*

The considerable increase in contracts from 2001 to 2005 is due to the large increase of the homeland security mission following September 11th, as well as, for Iraq and Afghanistan war requirements. In fact, defense contract expenses in Maryland accounted for about two-thirds of the increase. Several BBI Test Companies also noticed an increase in the number of procurement opportunities during the same time period, but others stress that they sensed a downturn.

There are many defense contracting opportunities for small businesses, but it may be harder to get the higher dollar value contracts because of such a strong presence of large prime contractors. Consider that Lockheed Martin, Northrop Grumman, Raytheon, and SAIC all have a major presence in the Fort Meade Region. In fact, all the top-ten defense contractors have a presence in Maryland defense contracting.

Top 10 Maryland Federal Contractors for fiscal year 2007

<u>Contractor Parent Name</u>	<u>Amount</u>
Lockheed Martin Corporation	\$1,045,056,327
SAIC, Inc.	676,777,229
Computer Sciences Corporation	645,954,193
Johns Hopkins University	620,264,669
Northrop Grumman Corporation	568,576,714
Textron Inc.	537,271,211
IBM	466,646,493
DRS Technologies, Inc.	433,335,902
ARINC Incorporated	425,518,851
Westat, Inc.	343,611,619
ARINC: Aeronautical Radio, Incorporated	Source: USAspending.gov
IBM: International Business Machines	
SAIC: Science Applications International Corporation	

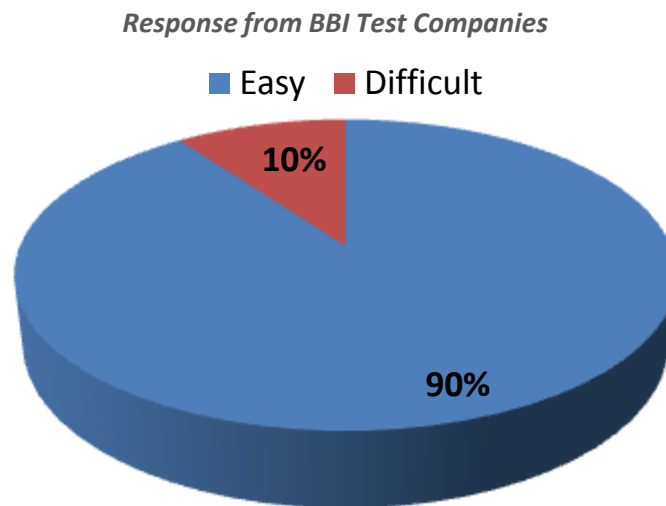
IV. GETTING STARTED IN FEDERAL CONTRACTING

The BBI's primary focus has been to connect small businesses in the region with the expanded opportunities brought on by BRAC and additional Fort Meade growth. In order to achieve this objective, the BBI staff determined that the current defense contracting environment needed to be more transparent. More facts and fewer anecdotes were needed by small businesses to complete effective business planning. To identify and document these facts, the BBI selected 20 Test Companies to go through a one year program, during which time, all that they did and all that they experienced was documented. Advisory Companies (Prime Contractors: SAIC, CyberCore Tech, Turner Construction), along with Sponsoring Agencies (DOD Agencies: NSA and DISA), created contracting "tracks" for BBI Test Companies. These tracks outline steps required to become a small business successful at defense contracting. Overall, the Test Companies indicated that these initial steps of positioning their business to qualify for defense contracting were straightforward and without complication. In fact, Test Companies indicated that the process for becoming a contractor to DOD (not including NSA and other agencies that have clearance

requirements) is not as difficult as commonly perceived by the general business community. Test Companies indicate that small businesses, considering these initial preparations for defense contracting, do not face insurmountable hurdles during this phase.

Once a small business has formed (written a business plan, secured a legal business name, raised capital, etc.) it is ready to begin the process of qualifying to bid on a defense contract. The company will have to obtain North American Industry Classification System (NAICS) numbers, register for the Data Universal Numbering System (DUNS) number, and take other important steps; all required for federal contractors. Once these steps are complete, a small business can be registered as a defense contractor. All, but two Test Companies, found the process of becoming a qualified defense contractor reasonably easy. There are no serious issues raised by Test Companies for this aspect of defense contracting.

Were the preliminary steps to qualify as a defense contractor easy or difficult?

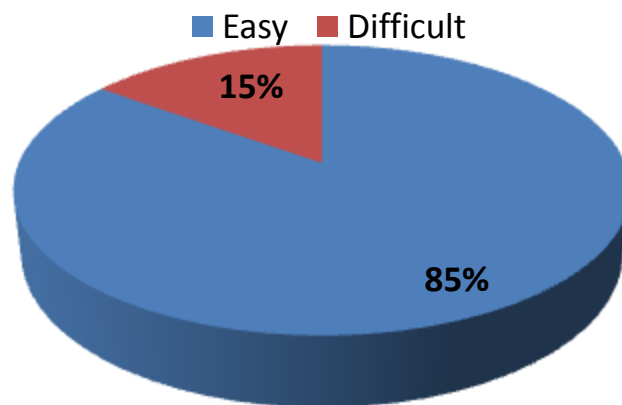


V. FINDING CONTRACTING OPPORTUNITIES

A business can find federal contracting opportunities in several different ways; the most common is on the internet. The most frequented website is <http://fedbizopps.gov> (FBO) because most federal opportunities for \$25,000 or more are required to be posted on that site. In addition, most DOD agencies post opportunities for less than \$25,000 on their individual websites. Test Companies did not find it difficult to identify contracting opportunities. Using FBO and other contract search vehicles was considered straightforward by the group.

Is it easy or difficult to find defense contracting opportunities?

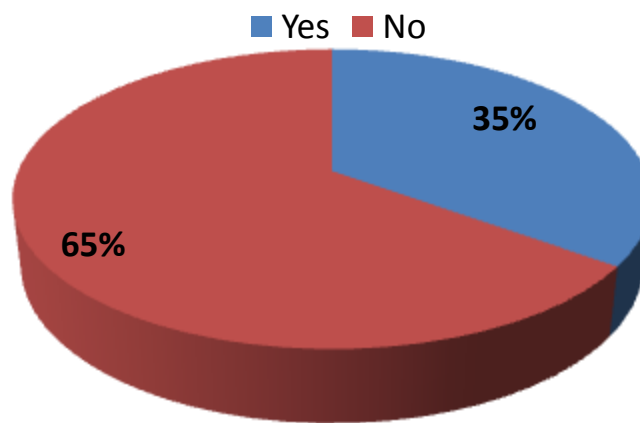
Response from BBI Test Companies



GSA Schedules, which are long-term contracts through the General Services Administration, are another opportunity available to small and minority businesses in Maryland. While getting on the GSA Schedule can be laborious, it was not beyond the reach of any of the Test Companies that wanted it. Many Test Companies stressed that the paperwork was extensive and time consuming, but manageable over an extended period of time. Two Test Companies were using private consultants to help get on the GSA Schedule, but the other companies attempting to get on, or already on the schedule, went through the qualification steps independently. The biggest issue raised by Test Companies was that companies on the GSA schedule had preset conditions regarding required sales necessary on their schedule for it to remain in effect. After considerable effort getting on a GSA schedule, some Test Companies' schedules automatically become inactive because they did not meet a designated dollar value of sales activity within a specified time frame. Test companies found this unnecessary and arbitrary, and wished, at the very least, that the deadline for inactivity would be extended.

Are you on the GSA Schedule?

Response from BBI Test Companies



While FBO and defense agency websites are free of charge, there are also private companies that assist contractors in finding opportunities for a fee by providing their own individualized leads or contract databases. Many of these private consultants have websites registrations and simply email pertinent opportunities directly to defense contractors for a subscription fee. Other consulting companies provide direct personal contract identification for a more significant fee. Many Test companies have been approached, even lobbied, to pay for such services. However, only 2 of 20 test companies opted for direct consulting services. Both companies found the services extremely beneficial.

VI. SECURING DEFENSE CONTRACTS

After finding a defense contracting opportunity, the difficult part for small and minority businesses is obtaining the contract. All businesses, small or large, take calculated risks when they expend the time and energy to bid for a defense contract – going for a contract does not mean you will get the contract. As a result, it is a safe assumption most businesses only bid on contracts where they believe they meet the government’s needs for the project. Even if a business does not meet all of the government’s needs under a proposed contract, that company may still be able to take on the project by forming a partnership with another prime contractor or as a subcontractor who can fill in the gaps for a prime.

A. SMALL BUSINESS IS IMPORTANT TO THE FEDERAL PROCUREMENT SYSTEM

According to the Services Acquisition Advisory Panel, the bedrock principle of commercial acquisition is competition.¹³ Government agencies rely on competitive awards to reduce prices and obtain innovative, high-quality goods and services. Small business is a prime component of this competition model.

The panel stated that small businesses are one of the nation’s most valuable economic resources. The report noted that studies commissioned by the Small Business Administration (SBA) Office of Advocacy indicate that small businesses represent 99.7% of employers and employ about half of all private-sector employees.¹⁴ Understanding the critical role of small businesses in the overall economy, Congress has acknowledged the need to support small business contracting as a fundamental goal underlying federal contracting policy. In order for the federal contracting system to thrive, fair and open competition must be achieved.

¹³ The Services Acquisition Reform Act (SARA) of 2003 established a Services Acquisition Advisory Panel to make recommendations for improving acquisition practices. In 2007, the panel proposed 89 recommendations to Congress for improving federal acquisition practices.




¹⁴ *Id.*

B. SMALL BUSINESS IN THE DOD CONTRACTING SYSTEM

The SBA has a “Small Business Procurement Scorecard” that provides an assessment of achievement in prime contracting to small businesses by 24 federal departments and agencies. It also measures progress that these departments and agencies are making to ensure small business opportunities remain an important part of their acquisition of services and goods. The scorecard was designed as an internal monitoring device to ensure that departments and agencies reach small business goals set by Congress. The scorecard also makes sure that the departments and agencies use accurate and transparent contracting data, and small business contracting progress is maintained.

The annual scorecard rates federal department and agency performance in meeting 1) the overall small business goal *and* contracting goals for 2) small disadvantaged businesses, 3) HUBZones, 4) small businesses owned by women, and 5) service-disabled veterans. According to the SBA’s scorecard ratings of performance on all five goals, DOD met or surpassed only one of the five goals. SBA rates the federal departments and agencies green, yellow or red on each of the individual goals. Green means a department or agency is meeting 100% of its goals.

Small Business Procurement Scorecard for DOD

 = Meets 100% of Goal  = Meets 90-99% of Goal  = Meets Less Than 90% of Goal

DEPARTMENT OF DEFENSE SCORES	Small Business	Small Disadvantaged Business	HUBZone	Women Owned	Service Disabled Veteran Owned
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C. BUNDLING

DOD requirements for competition in contracting shift as the government has variously sought to realize the benefits of competition or to further other goals, such as the protection of national security in times of war. Armed conflicts can lead to relaxation of competition in contracting, which may result in increased abuses—such as “war profiteering” by contractors and waste of money on overpriced goods and services—that later lead to increased competition requirements.¹⁵ This is a continual cycle in the world of defense contracting.

After September 11th, DOD made a shift toward larger procurements.¹⁶ With the addition of two wars, competition in defense contracting has attracted serious congressional attention over the past few years because of reports that the number of noncompetitive contract actions have increased and high-profile incidents of alleged misconduct by

¹⁵ Kate Manuel; *Competition in Federal Contracting: An Overview of the Legal Requirements*; [Congressional Research Service Report](#); August 20, 2009.

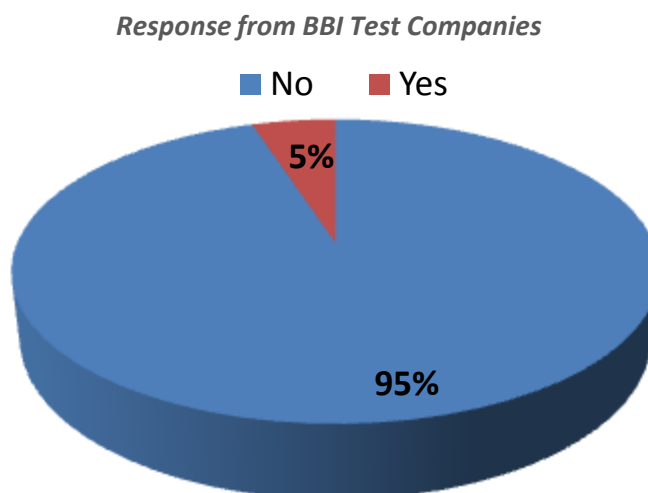
¹⁶ Sandra I. Erwin; *Defense Contracting Methods Stifle Innovation*; [National Defense Magazine](#); April 2010.

contractors involving noncompetitive contracts.¹⁷ The “pendulum” is swinging back as the current lack of competition in defense contracting has been called into question by members of Congress.¹⁸ The executive branch has also recently reemphasized its commitment to competition in federal contracting.¹⁹

48 C.F.R. § 8.404(a) (requiring compliance with 48 C.F.R. § 19.202-1(e)(1)(iii):
“Contract bundling” involves consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to—(i) [t]he diversity, size, or specialized nature of the elements of the performance specified; (ii) [t]he aggregate dollar value of the anticipated award; (iii) [t]he geographical dispersion of the contract performance sites; or (iv) [a]ny combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.

Is bundling really hindering small businesses to the extent perceived? When Test Companies were asked if bundling directly impacted their contracting practices and/or opportunities, only one Test Company could give a specific example of being impacted by bundling in the last year.

Has bundling directly impacted your contracting practices and/or opportunities?



Through the experiences of BBI Test Companies, bundling does not appear to be a systemic problem that directly impacts small business contracting opportunities on a day-to-day basis. While bundling clearly occurs, the BBI has not identified it as a consistent obstacle to small business growth. In fact, one Test Company stated, “Primes that get bundled contracts are always looking for subcontractors to fulfill those contracts, and I work towards being one of those subcontractors.”

¹⁷ Kate Manuel; *Competition in Federal Contracting: An Overview of the Legal Requirements*, Congressional Research Service Report; August 20, 2009.

¹⁸ *Id.* Note: Reduction of administrative or personnel costs alone is not sufficient justification for contract bundling unless the cost savings are expected to be at least ten percent of the estimated contract or order value (including options) of the bundled requirements.

¹⁹ The White House; *Presidential Memorandum on the Interagency Task Force on Federal Contracting Opportunities for Small Businesses*; April 26, 2010.

The Test Company experience points to the fact that bundling itself does not preclude small business participation. While SBA discourages agencies that combine similar requirements to maximize economies of scale, bundling of requirements into large contracts does not prevent small businesses from performing on them as subcontractors. The SBA indicates 34,221 new bundled contracts were awarded between 1992 and 2000.²⁰ Yet, only 25 bid protests were filed by contractors from 1992-2004 over contract bundling.²¹ While the infrequency of bid protests could potentially counter SBA's estimates of bundling frequency, it should be noted that this trend could be due more to lack of resources and time on the part of small businesses. Regardless, several Test Companies stated that it was easier to build connections with their counterparts in the private sector (i.e. subcontract) than connecting with agency program managers or contracting officers for a prime contract.

For those who do consider bundling an issue of primary concern, it should be noted that members of Congress are currently looking at this issue. For example, S. 2989 (Small Business Contracting Revitalization Act of 2010) amends the Small Business Act to direct each federal agency to include in each solicitation for any contract award above the substantial bundling threshold a provision soliciting bids by small business teams and joint ventures. It also requires each agency head to publish on its website its policy on contract bundling and consolidation, as well as a rationale for any bundled contract solicited or awarded. Finally, the Act contains a provision in which contracting officers must certify that bundled contracts in excess of \$2 million are not suitable for small business participation, *although this certification requirement does not apply to DOD contracts*.²² Recently the IMPROVE Act (H.R. 5013) was also introduced in Congress to reduce waste due to bundling and encourage innovation in the defense marketplace.

D. SUBCONTRACTING PRACTICES

Small businesses can spend time and money preparing bid proposals with a large prime contractor and then never receive any part of the work once the contract is won. While only raised as an issue by three Test Companies, these companies were adamant about addressing the unfairness in this practice. Essentially, a small business gets pulled into a bid due to its status (SDVOB, etc.) and then gets discarded once the partnering prime wins the contract.

S. 2989 also targets predatory subcontracting practices. The bill increases oversight of large business prime contractors to ensure they are actually using the small businesses that they proposed in their RFP responses and that they are actually meeting their small business subcontracting requirements.²³ Once a small business is awarded a subcontract

²⁰Philip G. Bail; *The Demise of the Federal Government Small Business Program*; Defense Acquisition University; January 2010.

²¹ Timothy T Nerenz; Federal Government Procurement Policy Analysis: Has Extent and Effect of Contract Bundling on Small Business Been Overstated; July 2006.

²² Heather James; *Proposed Senate Bill S.2989 Would Require Agencies to Reconsider Bundled Requirements and Remove Obstacles to Small Business Contracting Opportunities*; March 16, 2010.

²³ *Id.*

by a prime, S. 2989 imposes strict oversight requirements to ensure that subcontractors receive payment within 90 days after the subcontractor completes work.

Though Test Companies only casually raised this issue, it should be noted that S. 2989 also cracks down on large businesses that disguise themselves as small businesses for contracting opportunities. The lax nature of small business recertification can allow businesses that are no longer small to qualify for small business set aside contracts. Small businesses are only required to recertify their size under certain circumstances, such as, after an acquisition or merger, or at the end of the fifth year in a long term contract. The bill closes this loophole and requires contractors to annually recertify their size status.

E. SMALL BUSINESS GOALS vs. SMALL BUSINESS MANDATES

The Small Business Reauthorization Act of 1997 sets a government-wide goal for small business participation of not less than 23% of the total value of all prime contracts awarded directly by an agency for each fiscal year.²⁴ This act also sets goals for participation by specific types of small businesses.

Small Business Reauthorization Act's Goals for Specific Types of Small Businesses

Type of small business	Definition	Annual prime contracting goals
Small disadvantaged businesses, including 8(a) businesses	Majority-owned and whose management and daily business is controlled by one or more individuals who are socially and economically disadvantaged.	5%
Women-owned small businesses	Majority-owned and whose management and daily business operations are controlled by one or more women.	5
Service-disabled veteran-owned small businesses	Majority-owned and whose management and daily business operations are controlled by one or more service-disabled veterans.	3
Businesses located in historically underutilized business zones (HUBZone)	Owned and controlled by individuals operating in qualified HUBZones. A principal office must be located within a HUBZone and at least 35 percent of the business' employees must reside in a HUBZone.	3

Source: Small Business Act.

Note: While there is no numerical goal for VOSBs, there is a mandated goal of 3% for SDVOSBs.²⁵

These set percentages are “aspirational” goals and not mandated by the federal government. SBA cannot penalize federal department/agencies for not meeting their goals. As stated in a previous section, the SBA gives DOD the lowest rating in 4 of the 5 goals. While there is a reporting mechanism, many Test Companies complained that there is no real accountability in the system. While defense expenditures and contracting are increasing, the piece of the pie provided to small businesses is actually falling as a percentage.²⁶ The biggest reason for this is lack of oversight: the SBA lacks the clout to

²⁴ Small Business Reauthorization Act of 1997, Pub. L. No. 105-135 § 603 (1997), *codified at* 15 U.S.C. § 644(g), as amended.

²⁵ *Id.*

²⁶ Carol D. Leonnig; *Agencies Counted Big Firms As Small*, Washington Post; October 22, 2008.

effectively monitor awards to small businesses.²⁷ If businesses or federal agencies erroneously report information to the SBA there are no serious penalties. As Test Companies noted, there are no legitimate tools of enforcement.

In 2007, one large company alone won \$223 million in contracts initially classified as small-business awards by the Defense Department.²⁸ Lloyd Chapman, president of the American Small Business League, stresses that "for every dollar that was taken away from small business and miscounted, companies were forced into bankruptcy."²⁹ In fact, during the BBI program, one Test Company had to close its business, in part, because they could not compete with larger contractors in its field. The federal government has pledged in past years to give better tools to the SBA and impose new controls for greater reporting accuracy, but problems persist.

1. MARYLAND AS A MODEL

Maryland's small business program has a 25% goal for the value of all procurement awards.³⁰ Sixteen other states have set minority or women-owned business spending goals. The goals range from 4% of contract spending in Washington State to 25% in Maryland, the highest in the nation.³¹

Test Companies appreciated that Maryland has "teeth" to enforce its ambitious contracting goals for small businesses. When companies abuse Maryland's small business program, sanctions can be applied. Administrative sanctions can be applied for false, fraudulent, and dishonest conduct. Sanctions include, but are not limited to: termination of the contract, referral to the Office of the Attorney General for criminal investigation, and initiation of any other specified remedy identified in the contract or in applicable laws and regulations.³²

Maryland is projecting that it will meet its 25% goal for calendar year 2010³³ and Test Companies are asking why the federal government can't achieve the same results. Some Test Companies directly attribute Maryland's small business program for prime contracts they have won with the State and suggest that the federal government should try to mirror the Maryland small business contracting model.

²⁷ Carol D. Leonnig; *Agencies Counted Big Firms As Small*, Washington Post; October 22, 2008.

²⁸ *Id.*

²⁹ *Id.*

³⁰ To justify the spending goal, governments use disparity or utilization studies. Maryland's current 25% goal is based on a 2006 study.

³¹ Insight Center for Community Economic Development; www.insightcced.org; site visited May 30, 2010.

³² Maryland Department of Transportation; Minority Business Enterprise; www.mdot.maryland.gov/MBE_Program/faqs; visited on June 6, 2010.

³³ Jason Flanagan, *BRAC: Q&A with Maryland Lt. Gov. Anthony Brown*; Corridor Inc; May 2010.

2. U.S. DEPARTMENT OF VETERAN AFFAIRS AS A MODEL

While the Department of Veteran Affairs (VA) does not have a small business contracting mandate, it has additional tools at its disposal. As stated earlier, there is no numerical goal for VOSBs, but there is a goal of 3% for SDVOSBs in the Department of Defense and other federal departments. However, VA always exceeds these set percentages. For example, in 2007, the VA established a contracting goal for VOSBs at 7% (award 7% of its total procurement dollars to VOSBs).³⁴ VA exceeded this goal and awarded 10.4% of its contracting dollars to VOSBs in 2007. In fact, VA awarded contracts for more than \$6.1 billion to VOSBs and SDVOSBs from fiscal years 2007-2009.³⁵ What makes this even more amazing is that the 3% goal for SDVOSBs is the most underachieved goal of all the small business goals set by the federal government. In fiscal year 2008, only 4 of 24 federal agencies met the SDVOSB goal.³⁶

VA increased its VOSB contracting goals to 10% for fiscal year 2008 and fiscal year 2009 and exceeded those goals as well—awarding 14.7 percent of contracting dollars to VOSBs in FY08 and 19.7% in fiscal year 2009.³⁷ In nominal dollar terms, VA's contracting awards to VOSBs increased from \$1.2 billion in fiscal year 2007 to \$2.8 billion in fiscal year 2009, while at the same time, SDVOSB contracting increased from \$832 million to \$2.4 billion.³⁸

The increase of awards to VOSBs and SDVOSBs largely was associated with the agency's greater use of the goals and preferences authorities established by the Veterans Benefits, Health Care, and Information Technology Act of 2006. For example, veteran set-aside and sole-source awards represented 39 percent of VA's total VOSB contracting dollars in fiscal year 2007. However, in fiscal year 2009, VA's use of these veteran preferences authorities increased to 59% of all VOSB contracting dollars. In nominal dollar terms, VA's use of these veteran preferences authorities increased by \$1.2 billion over the past 3 years. VA's use of set-aside and sole-source awards for SDVOSBs contributed to an even greater extent to the increase in awards to these businesses from fiscal years 2007-2009. For each of these years, more than 90% of contracts to SDVOSBs were awarded through set-aside and sole-source mechanisms.

³⁴ The Veterans Benefits, Health Care, and Information Technology Act of 2006 (Pub. L. No. 109-461 or the 2006 Act) requires that VA give priority to these two categories of small businesses when awarding contracts to small businesses and provides for the use of limited competition contract awards (sole-source and set-aside) to achieve contracting goals that VA is required to establish under the 2006 Act.

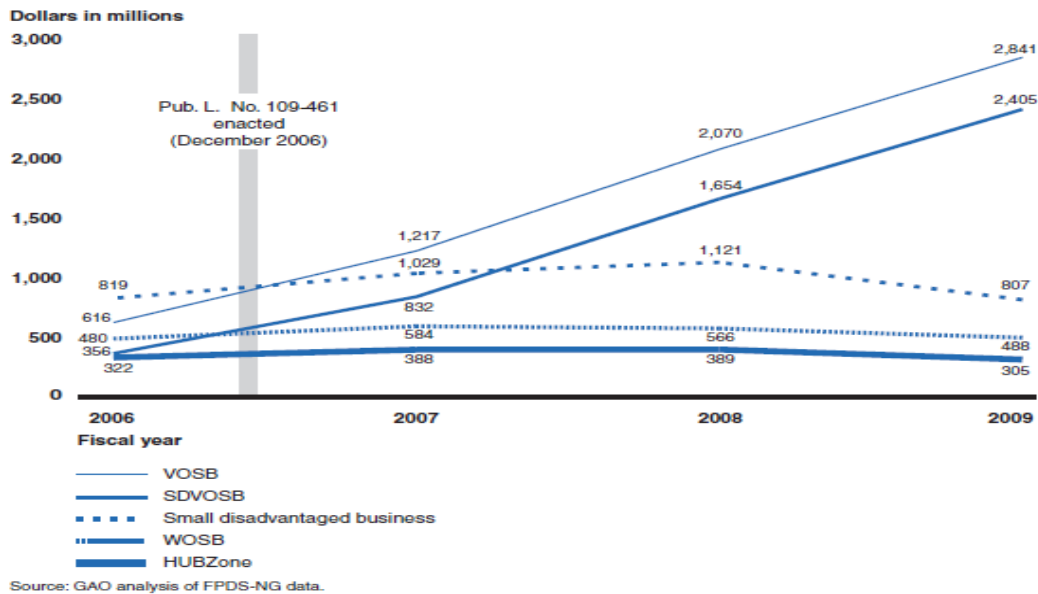
³⁵ Government Accountability Office; *Department of Veterans Affairs: Agency Has Exceeded Contracting Goals for Veteran-Owned Small Businesses, but It Faces Challenges with Its Verification Program*; [GAO-10-458](#); May 28, 2010.

³⁶ SBA Fiscal Year 2008 Scorecard.

³⁷ Government Accountability Office; *Department of Veterans Affairs: Agency Has Exceeded Contracting Goals for Veteran-Owned Small Businesses, but It Faces Challenges with Its Verification Program*; [GAO-10-458](#); May 28, 2010.

³⁸ *Id.*

VA's Level of Contracting with Various Small Business Categories Fiscal Years 2007-2009



Without the utilization of its new tools, the VA experienced opposite results for other designated small business goals. Although VA exceeded its contracting goals for VOSBs and SDVOSBs in fiscal years 2007-2009, it did not meet its goals in other small business categories for that period. For example, VA's contracting with WOSBs decreased since the implementation of the 2006 Act. More specifically, VA contracting with WOSBs decreased from \$584 million in fiscal year 2007 to \$488 million in fiscal year 2009.

VA currently focuses its oversight of subcontracting activities on prime contractors with subcontracting plans, mainly by reviewing their electronic reports of subcontracting activity. Large businesses with federal contracts of \$550,000 or more (\$1 million for construction) generally must have subcontracting plans that include goals for subcontracting with VOSBs and SDVOSBs. VA identifies and disqualifies prime contractors that have not made a good-faith effort to comply with their subcontracting plans.³⁹

Several Test Companies have benefited from the VA's new approach to contracting. Many of these Test Companies have not found the same success with DOD contracting, possibly because DOD agencies do not benefit from the greater use of limited competition contract awards (sole-source and set-aside) to achieve contracting goal results, much like the VA does under the 2006 Act.

F. NETWORKING: CONNECTIONS VS. CAPABILITY

Building relationships is critical to success in all aspects of business because people want to do business with people they know and trust. But what happens if relationships are the

³⁹ The 2006 Act requires the VA to establish a subcontracting review mechanism to ensure that prime contractors actually awarded subcontracts to service-disabled or other veteran-owned businesses.

overriding criteria? Some Test Companies question the integrity of the defense contracting system when it comes to connections as a major factor in winning contracts. One of the most common complaints of defense contracting is the “perception” that, in spite of qualifications, connections play the most vital role in winning a contract. However, the experience of Test Companies show this may not be just a perception problem. Each BBI Track sponsored by a defense agency or prime defense contractor emphasized networking. In fact, each Test Company that has successfully contracted on the federal level acknowledged some role that connections played in their contracting success. One Test Company exclaimed that “having the right relationships is not an advantage, it’s a requirement.” Competency, quality, and price are certainly factors in awarding a contract, but it appears that the current contracting culture relies heavily on networking.

In 2006, 52 major defense contractors employed 2,435 former DOD senior and acquisition officials who had previously served as generals, admirals, senior executives, program managers, contracting officers, or in other acquisition positions which made them subject to restrictions on their post-DOD employment.⁴⁰ In 2006, these 52 major defense contractors⁴¹ employed 86,181 former military and civilian personnel who had left DOD service since 2001.⁴²

Contractors with Most Employment of Former DOD Senior and Acquisition Officials in 2006		
Contractor	Number of former officials employed	Percentage of post-DOD employment
Science Applications International Corporation	263	10.8%
Northrop Grumman Corporation	260	10.7%
Booz Allen Hamilton, Inc.	243	10.0%
L3 Communications Holding, Inc.	241	9.9%
Lockheed Martin Corporation	221	9.1%
General Dynamics	207	8.5%
Raytheon Company	146	6.0%
Subtotal	1,581	64.9%
Total, all 52 contractors	2,435	100%

Sources: GAO analysis; DOD and IRS data.

Prime contractors are well aware of the paramount importance of connections in winning a defense contract. In fact, the major defense contractors are dominating the market and keep these connections out of the hands of the smaller competition. Most of the 2,435 former DOD officials cited were employed by just *seven* prime contractors.⁴³ Large defense contractors are eager to overcome this “perception” problem. Contractor-supplied data showed that the large defense contractors employed 1,263 former DOD officials in 2006, while IRS data showed the contractors employed 2,435.⁴⁴ While the DOD has cracked down on number reporting, the main point of this example is that much of securing a DOD contract comes down to connections.

⁴⁰ Government Accountability Office; *Defense Contracting: Post-Government Employment of Former DOD Officials Needs Greater Transparency*; [GAO-08-485](#); May 21, 2008.

⁴¹ Note: Section 851 of the National Defense Authorization Act for Fiscal Year 2007 defined major defense contractors as any company that received at least \$500 million in contract awards from DOD in fiscal year 2005. To identify those contractors, GAO analyzed data on the values of contracts awarded to all companies from DOD’s Statistical Information Analysis Division. As a result, GAO identified the 52 contractors meeting the major defense contractor criteria to include in its review.

⁴² Government Accountability Office, *Defense Contracting: Post-Government Employment of Former DOD Officials Needs Greater Transparency*, [GAO-08-485](#); May 21, 2008.

⁴³ *Id.*

⁴⁴ *Id.*

Having former military officers and personnel work for private industry that supports the defense sector is beneficial to retaining important institutional knowledge. However, Congress has long been concerned about the movement of government officials from DOD to private employers who do business with their former agencies and has passed laws that place limitations on the employment of former government officials. This practice is not a primary concern of this paper (or the BBI), it is what this practice reveals that is important – connections are key to contracting. Though enforcement appears poor, Congress has imposed a 1 year compensation ban for former procurement officials working on contracts attached to their former agency/division.⁴⁵

There are some recent high-profile cases involving former senior DOD officials violating these laws or related conflict of interest law on seeking post-government employment with contractors. Here are just two examples:

- A retired Navy rear admiral pleaded guilty to signing a major contract proposal on behalf of his new contractor employer and sending it to his former Navy command within the 1-year cooling-off period. The former officer admitted that his intent was to influence the Navy's decision and obtain the contract award for his new company. He was sentenced to a year's probation and fined \$15,000.⁴⁶
- The Boeing Company was fined \$615 million and had a lease contract valued at \$20 billion canceled due to the failure of a former Air Force procurement officer, to obey conflict of interest laws that prohibit officials from continuing to participate in work with a company while pursuing future employment. When she was working for the Air Force, she negotiated a job with Boeing while the company was seeking a \$20 billion contract. The procurement officer served a prison sentence for the violations, and the Boeing Company's Chief Financial Officer pleaded guilty to aiding and abetting fraud and was sentenced to four months in prison.⁴⁷

⁴⁵ 18 U.S.C. § 207 (post-employment conflict of interest) and 41 U.S.C § 423 (restrictions on former officials' acceptance of compensation from a contractor). Congress has long been concerned about the movement of government officials from DOD to private employers who do business with their former agencies and has passed laws that place limitations on the employment of former government officials.

⁴⁶ Government Accountability Office, *Defense Contracting: Post-Government Employment of Former DOD Officials Needs Greater Transparency*, [GAO-08-485](#); May 21, 2008.

⁴⁷ *Id.*

Contractors with the Most Employment of Former DOD Officials in 2006

(Dollars in millions)

Contractor	Value of DOD contract awards in fiscal year 2005	Number of former DOD senior and acquisition officials employed	Percentage of total post- government employment
Total, all 52 contractors	\$142,833	2,435	100%
SAIC	\$2,796	263	10.8%
Northrop Grumman Corp.	13,512	260	10.7%
Booz Allen Hamilton, Inc.	1,163	243	10.0%
L3 Communications Holding, Inc.	4,714	241	9.9%
Lockheed Martin Corporation	19,447	221	9.1%
General Dynamics	10,641	207	8.5%
Raytheon Company	9,109	146	6.0%
Total	\$61,382	1,581	64.9%

Sources: GAO analysis ; DOD and IRS data.

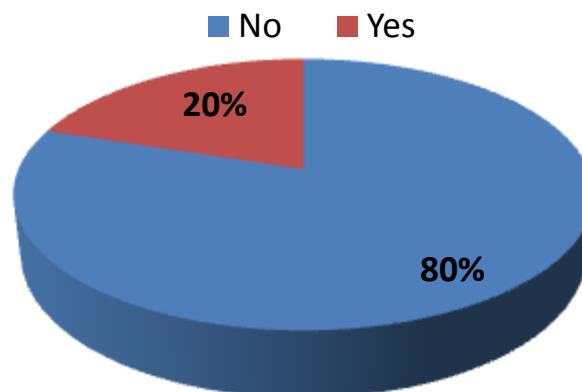
Note: Individual percentages do not equal the total due to rounding.

G. SBA'S 8(A) PROGRAM

In fiscal year 2008, the federal government awarded \$93.3 billion in contracts to small businesses.⁴⁸ The SBA plays an important role in ensuring that small businesses gain access to federal contracting opportunities. Section 8(a) of the Small Business Act is intended to help small businesses owned by socially and economically disadvantaged individuals compete in the economy by providing business development activities, such as counseling and technical assistance, and providing access to federal contracting opportunities. The 8(a) program does not guarantee that participating firms will obtain federal contracts, but the firms are eligible for competitive (for which only 8(a) firms can compete) and sole-source (for which awards are made without competition) federal contracts when certain requirements are met. There are so many companies in the 8(a) program that several Test Companies simply stated that “being in the program is only a license to hunt, it doesn’t get you the kill.” In fiscal year 2008, approximately 9,460 firms were in the program.⁴⁹

Are you in the 8(a) Program?

Response from BBI Test Companies



⁴⁸ Government Accountability Office, *Steps Have Been Taken to Improve Administration of the 8(a) Program, but Key Controls for Continued Eligibility Need Strengthening*, GAO-10-353; March 30, 2010.

⁴⁹ *Id.*

A firm must meet several initial eligibility requirements to qualify for the 8(a) program (a process known as certification), and then meet other requirements to continue participation. In general, a company meets the basic requirements for admission to the program if it is a small business that is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and U.S. citizens, and which demonstrates the potential for success.

Participation in the 8(a) program lasts 9 years, and once it is completed, a firm and the individual cannot reapply. The 9-year program tenure is divided into two stages—a developmental stage covering years 1 through 4, and a transitional stage covering years 5 through 9. During the transitional years, firms are required to meet certain activity targets for non-8(a) contracts to ensure they do not develop an unreasonable reliance on the program. Test Companies said the transition stages of the 8(a) program generally worked as intended because they had a “pipeline” of work going into their graduation from the program. The 8(a) program never became a crutch for any of the Test Companies. In all, Test Companies believed that being in the 8(a) program doesn’t necessarily help you because there are so many companies in the program, but not being in the program can certainly hurt you because it denies you specific contracting opportunities.

H. CONTRACTING WITH THE NATIONAL SECURITY AGENCY

The United States’ top codemakers and codebreakers work for the National Security Agency (NSA). Fort Meade is home to the NSA. Both NSA and Fort Meade have an enormous economic impact on Maryland, pumping over 2.5 billion dollars per year into Howard County alone.⁵⁰

NSA collects, monitors, and provides sensitive security information for government decision makers and military leaders. The core mission of NSA is to protect U.S. national security systems and produce foreign signals intelligence information.⁵¹ By its very nature, the work NSA necessitates an extremely high degree of confidentiality. This creates a serious challenge to small businesses desiring to do business with NSA.

The experience of Test Companies and the reality of its policies demonstrates that NSA operates very differently from most other federal agencies with regard to purchasing and procurement. In the majority of federal agencies, the procurement process is fairly transparent in that if one knows where to look, opportunities can be located, as revealed in the first half of this paper. NSA operates in a much more closed business environment.

Until recently, NSA was one of the most secretive intelligence agencies, more shielded from public visibility than even the Central Intelligence Agency (CIA).⁵² It is undeniable that NSA is now much more open and, in turn, its contracting practices have become more public. To the agency’s credit, Test Companies acknowledged that NSA’s small business and business

⁵⁰ Jennifer Walsmith; presentation to the Howard County Economic Development Authority; 2008.

⁵¹ National Security Agency; www.nsa.gov/about/mission/index.shtm; site visited May 27, 2010.

⁵² Jeffrey T. Richelson; *The National Security Agency Declassified*; National Security Archive Electronic Briefing Book No. 24; January 13, 2000.

outreach executives have been proactive in discussing policies surrounding contracting with the agency. However, to appreciate what small and minority businesses in the Fort Meade Region face, one needs to understand the history behind the current state of contracting at NSA.

1. The Current State of NSA Contracting

In 1999, Air Force Lt. General V. Michael Hayden assigned a number of NSA officials, known as the New Enterprise Team, to review the agency's organizational structure.⁵³ This group recommended the development of strategic business plans and a move away from NSA's traditional preference for performing all functions in-house. Civilian contractors were no longer to be seen as sources of manpower but as "solution providers."⁵⁴ In fact, NSA was urged not only to take advantage of the potential advantages of outsourcing but also to bring in mid-level and upper-level managers from successful private businesses. Hayden launched initiatives responsive to these recommendations and explained that bringing in more private contractors would help NSA "accurately forecast technology trends in the face of an explosion of information systems and react agilely to new technological innovations."⁵⁵

In 2001, NSA came under even more pressure to increase competition and was directly challenged to meet small business goals.⁵⁶ New "Buy vs. Make" policies increased pressure on contracting and made partnerships with industry vital to mission success. However, it appears that increased security requirements hampered outreach efforts. As a result, the Acquisition Resource Center (ARC) was established by NSA on August 1, 2001.⁵⁷

2. NSA's Acquisition Resource Center (ARC)

The Test Companies appreciate that it is simply not possible for the NSA to publicly advertise all forecasts and contract opportunities because doing so would compromise sensitive national-security information and threaten the mission of the agency. Nonetheless, Test Companies acknowledge that NSA has become more open to new businesses and established a proactive vendor program to address contracting opportunities for small and minority businesses. An example of this greater openness is the ARC, which is a vendor registration process that can be accessed on NSA's website.

Registration at the ARC is required to do business with NSA because the ARC database serves as the principal market research tool for NSA personnel. Program managers, contracting officers, and small business specialists use the ARC to identify potential vendors for contracting. The ARC is NSA's one-stop source for acquisition information. Businesses with appropriate clearances will be able to:

⁵³ Richard Best; *The National Security Agency: Issues for Congress*; Congressional Research Service; January 16, 2001.

⁵⁴ *Id.*

⁵⁵ Richard Best; *The National Security Agency: Issues for Congress*; Congressional Research Service; January 16, 2001.

⁵⁶ Deborah Walker; presentation on the Acquisition Resource Center (ARC); Office of Executive Plans, Policy, and Outreach for the Senior Acquisition Executive, National Security Agency.

⁵⁷ *Id.*

- Review acquisition related announcements
- View Business Forecasts
- Access Requests for Information/Request for Proposals

All BBI Test Companies that have used the ARC praise its overall ease of use. One Test Company stated that “it was the easiest aspect of doing business with NSA.” Staying current and updated on the ARC was also not an issue for any of the Test Companies. The Test Companies appreciated the fact that NSA could not openly advertise contracting opportunities on FBO and understood NSA’s use of the National Security Exception under Federal Acquisition Regulations (FAR) which allows for “other than full and open competition.”

ARC Registry Growth From 2001-2006⁵⁸

CATEGORY	1 Oct 01	1 Oct 02	1 Oct 03	1 Oct 04	1 Oct 05	1 Oct 06	05/06 Change
Number of Companies	144	1165	1929	3056	4388	5425	24%+
Number of Contacts	55	1828	2947	4842	7197	9503	32%+
Large Businesses	49	289	437	690	945	1122	19%+
Small Businesses	95	876	1485	2365	3435	4303	25%+
Minority Owned	25	294	496	721	984	1245	27%+
Woman Owned	32	216	364	574	806	997	24%+
Service Disabled Veteran	N/A	6	64	134	235	346	47%+
Small Disadvantaged	N/A	254	459	664	911	1140	25%+
8(a) Status	19	160	271	349	480	613	28%+
Certified HUBZone	7	89	142	202	259	300	16%+
Tribally Owned	N/A	0	6	11	19	24	26%+
Alaskan Owned	1	5	6	13	25	32	28%+
Native Hawaiian	N/A	N/A	N/A	N/A	N/A	3	-
Hispanic Serving	N/A	N/A	N/A	N/A	N/A	4	-
Historically Black	0	1	4	11	13	12	(8%)-
Facility Clearance	N/A	534	569	760	1205	1467	22%+
NSA Cleared	N/A	41	473	734	980	1265	29%+
Other Gov Clearances	N/A	73	723	1338	1873	2592	38%+
Top Secret SCIF	N/A	199	271	343	388	320	(18%)-

3. Clearance and the Provisional Industrial Security Approval (PISA) Program

NSA has strict security and clearance requirements in place for businesses that want to contract with the agency. However, for several Test Companies seeking to do business with NSA, obtaining security clearances was a nearly insurmountable hurdle. Previously,

⁵⁸ Deborah Walker; presentation on the Acquisition Resource Center (ARC); Office of Executive Plans, Policy, and Outreach for the Senior Acquisition Executive, National Security Agency.

this was due to what many businesses call the “chicken-and-egg problem.”⁵⁹ Getting a security clearance is not possible without having a contract, but getting a contract is not possible without clearance. After years of practice and relationship building, larger defense contractors have become adept at navigating the clearance bureaucracy to win intelligence contracts. Test Companies are not experiencing the same success.

Test Companies are told that NSA does not want companies simply skilled at navigating the system, it wants new companies that can bring innovation to help support its high-tech mission.⁶⁰ As a result, Test Companies have been directed to the PISA Program. PISA was started to broaden NSA’s vendor base, which was previously restricted by the “chicken-and-egg” clearance dilemma. A former program manager for PISA states that the program increases the number of corporate representatives that the NSA can discuss current requirements with, expanding its exposure to innovative capabilities.⁶¹ The former program manager stresses that before PISA it was often “a one-way conversation. You tell us what you do, but we can’t tell you what we need.”⁶²

PISA Program Details⁶³

- Technical Recommendation required for consideration into the program.
- Complete SCI Access (FOCI) review is conducted.
- 3 year program (starting at MOU signing).
- 10 personnel clearances can be held at any one time for the company.
- PISA Letter grants company’s eligibility to participate in classified discussions.

Since its inception, PISA has cleared over 5000 workers, representing over 1000 small businesses that are either currently in the program or have been in the program.⁶⁴

a. Getting into PISA

While a small business can submit a company capability briefing to NSA, there is no formal process for accepting or rejecting this submission. As a result, the formal recourse for many small businesses is entering PISA. All Test Companies that have looked into (including those that entered) PISA indicate that the program was not easy to enter. In fact, one Test Company states “It may be quicker to go the traditional route of latching onto a prime that wants you as a subcontractor and will aid you through the clearance process.” Getting into PISA may be difficult, but it is not impossible: over 300 small businesses are currently in the program.⁶⁵ NSA acknowledges that the program is designed not to be easy to enter. The cost to clear, administer and manage companies is high and there are, by

⁵⁹ Maryann Lawlor, *Secure Work: The Largest Catch 22 of All*; [SignalScape](#); June 17, 2009.

⁶⁰ Note: There are many contracting opportunities at NSA outside of the “high tech mission” area. NSA looks for companies that can provide a variety of goods and services across a wide range, including office supplies, building services, and physical security, to name a few.

⁶¹ Maryann Lawlor; *Secure Work: The Largest Catch 22 of All*; [SignalScape](#); June 17, 2009.

⁶² *Id.*

⁶³ Katrina Kindle; presentation on the *Provisional Industrial Security Approval (PISA) Sponsorship Program*; National Security Agency; June 17, 2009.

⁶⁴ NSA Industry Outreach and Facilitation Office.

⁶⁵ *Id.*

design, specific requirements that companies must meet to enter the program – the most significant being the technical recommendation.

One of the primary factors that make the PISA security clearance process so difficult is that it requires each business to have an NSA "sponsor" to recommend it to the program (the technical recommendation). The PISA Program does not directly facilitate a relationship between a potential small business and a sponsor. One Test Company complained, "Unless you have a relative in the NSA, your only recourse is luck in finding a sponsor." While it is difficult to gain direct access to NSA personnel, small businesses have independently found sponsors through networking at NSA backed events or the NSA contractor community.

Only once an NSA sponsor's recommendation is validated and an application approved, can a small business then have access to certain levels within NSA in order to market their business. Based on the experience of some Test Companies, building a relationship with a current NSA prime or subcontractor has a higher probability than finding an unknown entity imbedded within NSA. One Test Company asked, "You can hit the networking circuit to try to form partnerships with a company contracting with NSA, but where do you go to find a PISA sponsor?" Test Companies stress that while it is not easy to get connected to NSA primes, it is not any easier to find a sponsor for the PISA program. Based on their experiences, some Test Companies question whether this "networking approach" to qualifying small businesses as NSA contractors is an ideal approach to connecting innovative small businesses to the Agency's industrial base.

b. Level of Clearance

While PISA is publicly perceived by many BBI member companies as a "fast track" system to get into NSA's contracting pipeline, Test Companies in the program did not give it high marks for efficiency and effectiveness. Test Companies praise the PISA concept to increase their ability to talk with NSA on the classified level. However, PISA does not provide full scope ("lifestyle") polygraphs (i.e. suitability polygraphs), which are essential to obtaining a NSA contract. Even though PISA may facilitate classified discussions on technologies and capabilities of interest and benefit to the NSA, it has not led to contracting opportunities for Test Companies.

Through Test Company interviews, it appears that PISA's response to streamlining has been to award top secret clearance without a suitability polygraph. The problems Test Companies stress is that the suitability polygraph is one of the most time consuming parts of the clearance process. Now that PISA is not executing on the polygraph, they are closer to the federal government's goal of streamlining the clearance process. But Test Companies state that NSA still expects the suitability polygraph to win contracts. One Test Company in the PISA Program states "NSA has sacrificed PISA's effectiveness for efficiency."

In 2006, PISA had accelerated the security clearance process by cutting the average days of completing an investigation from 247 to 147.⁶⁶ Under a DOD directive enacted late last

⁶⁶ Jennifer Walsmith, *Defense AT&L Magazine*, Volume 35, Number 2, April 2006.

year, NSA must now complete the clearance of all new applicants (employee and contractor), to include adjudication, in 60 days.⁶⁷ NSA has been working to meet that goal and the current average time to clear is less than 75 days.⁶⁸ NSA also indicated that while it has streamlined the clearance process by not automatically conducting a suitability polygraph, small businesses in PISA can use a conditional clearance (CCA) to equal effect.

Some Test Companies have questioned the utility of a polygraph in the overall intelligence contracting scheme. However, senior officials from intelligence agencies that use the polygraph see it as a significant tool because of its utility in generating admissions of wrongdoing, either during the pre-test, test, or post-test period. The polygraph serves as a deterrent by eliminating some potential applicants from seeking a highly sensitive position or contract in the first place.⁶⁹ When the polygraph examination is conducted before the background investigation, it saves additional resources should the applicant be rejected as a result of polygraph admissions. According to a 1993 NSA letter to the White House, “over 95% of the information the NSA develops on individuals who do not meet federal security clearance guidelines is derived via [voluntary admissions from] the polygraph process.”⁷⁰

From the time of its inception following World War II, the personnel security process has remained vital to the protection of national security information. This process will not go away, but the experience of Test Companies may reveal that components of the process have not evolved to meet the current national security needs for small business innovation. If PISA is setup to attract small businesses that lend greater innovation to NSA, then the clearance portion of the program may not be working as effectively as possible.

VII. TRENDS FOR SMALL BUSINESS DEFENSE CONTRACTING

It's unclear what may happen to the defense industry in the event of a phased withdrawal from two wars, particularly Iraq. When past conflicts wound down, defense contracting spending fell. This uncertainty, and other issues, can have significant impacts on the future of defense contracting. This section will cover the concerns and opportunities Test Companies see on the horizon for small businesses in defense contracting.

1. In-sourcing

During interviews, several Test Companies raised concerns about the impact of in-sourcing on small business contracting opportunities. DOD has an “out-sourcing”/“in-sourcing” cycle that is beginning to trend toward in-sourcing.

In 1987, President Ronald Reagan formed the Presidential Commission on Privatization to specify which functions of the federal government could be performed by contractors.⁷¹

⁶⁷ NSA Industry Outreach and Facilitation Office.

⁶⁸ *Id.*

⁶⁹ Sheldon Cohen; *Use of the Polygraph in Security Clearance Determinations*, at www.sheldoncohen.com/publications/polygraph.htm; site visited June 6, 2010.

⁷⁰ National Security Agency; Letter to Holly Gwin, White House Office of Science and Technology; May 4, 1993.

⁷¹ Paul Blustein, *Panel Urges “Privatization” of Many Federal Services*, Washington Post, March 18, 1988.

The commission recommended seventy-eight areas in which privatization would increase the efficiency of the federal government. Those initial recommendations included calls to privatize everything from military commissaries to naval oil reserves.⁷² This was one of the primary triggers for the military to reduce its workforce by several hundred thousand active-duty members and civilian employees during the 1990s.⁷³ Now the cycle may be trending away from using outside contractors as Secretary of Defense Robert Gates begins pushing in-sourcing.

Secretary Gates has indicated a desire to reduce the number of defense contractors by bringing in more than 30,000 new DOD employees.⁷⁴ Reports claim that he proposes to reduce the role of contractor employees by a third and replace them with new government employees.⁷⁵ In front of the Senate Armed Services Committee, Secretary Gates said that the goal of the Obama Administration was to reduce the number of defense contractors to pre-Bush (i.e. pre-war) levels.

The Pentagon is in the process of developing plans to reduce the number of support contractors from 39% of the DOD workforce to the pre-2001 level of 26% and replacing them with full-time government employees.⁷⁶ The initial plan is to hire up to 13,800 new civil servants in fiscal year 2010 to replace contractors and up to another 33,600 new civil servants to replace contractors over the next five years.⁷⁷

Robert A. Burton, a former official at the Office of Federal Procurement Policy, is leading the Small Business Coalition for Fair Contracting, a group set up at the urging of several small-businesses whose employees have been hired away by the government.⁷⁸ He states that “[small businesses] just don’t feel like they have that much of a voice.”⁷⁹ The coalition is working to educate DOD about the consequences of in-sourcing for small businesses. Erik Olbeter, a Wall Street analyst believes “small businesses have some legitimate concerns, existential concerns about whether the in-sourcing policy could put them out of business.”⁸⁰ He stresses that small businesses are facing more problems not simply because they’re small, but because they tend to perform tasks that are more likely to be in-sourced. Large defense contractors, recognizing the push to in-source certain functions, have moved away from such areas.⁸¹

⁷² Paul Blustein, *Panel Urges “Privatization” of Many Federal Services*, Washington Post, March 18, 1988.

⁷³ Michael R. Gordon, *Military Services Proposing Slashes in Existing Forces*, New York Times, May 12, 1990.

⁷⁴ Matt Cover, *Obama Administration Wants to Slash Defense Contractors by Hiring More Than 30,000 New Federal Employees*, CNSNews.com, May 15, 2009.

⁷⁵ *Id.*

⁷⁶ Jim Garamone, *Gates Lays Out Budget Recommendations*, American Forces Press Service, Department of Defense, April 6, 2009.

⁷⁷ Matt Cover, *Obama Administration Wants to Slash Defense Contractors by Hiring More Than 30,000 New Federal Employees*, CNSNews.com, May 15, 2009.

⁷⁸ Marjorie Censer, *Federal “In-Sourcing” Plan Draws Mixed Reviews*, Washington Post, May 17, 2010.

⁷⁹ *Id.*

⁸⁰ Marjorie Censer, *Federal “In-Sourcing” Plan Draws Mixed Reviews*, Washington Post, May 17, 2010.

⁸¹ *Id.*

2. More Contract Oversight and Training

Some Test Companies said in-source maybe worth the risk if it creates more contracting oversight. In-sourcing may have some negative impact on small business contracting opportunities, but a potential benefit is that Secretary Gates plans to hire an additional 10,000 government acquisition professionals by 2015, with 4,080 acquisitions positions in fiscal year 2010.⁸²

While is too early to understand the specific impacts on future contracting opportunities for small business, it appears this shift will benefit small businesses on the oversight end. The number of DOD employees in acquisition-related organizations dropped from 230,000 in fiscal year 1999 to 206,000 in fiscal year 2004, a decline of more than 10%.⁸³ These reductions were made to an acquisition workforce that had already been cut in half over the previous 10 years.⁸⁴ Test Companies have raised concerns that there have been fewer and fewer procurement officials to manage more and more contract dollars. In their view, this new trend is a welcome change that will lend to greater oversight to protect small business interests.

3. Future of NSA Contracting

In fiscal year 1997 the total of all U.S. intelligence (budgets for national, joint military and tactical intelligence) spending was \$26.6 billion.⁸⁵ In fiscal year 2007 the total budget for the national intelligence program alone was \$43.5 billion.⁸⁶ Together with spending for the military intelligence program, which likely exceeded \$10 billion annually, the resulting aggregate figure for fiscal year 2007 is more than \$50 billion per year.⁸⁷ This is an extraordinary rate of growth; with even more significant growth on the horizon due to Cyber Command.

Roughly 70% of the intelligence community budget is now spent on contracts with commercial entities, according to one estimate from the Office of the Director of National Intelligence.⁸⁸ Cyber Command at Fort Meade will only bring more contracting opportunities. The importance of DOD's cyber activity is growing day-by-day as the country becomes more and more reliant on technology. The arrival of Cyber Command could potentially have a significant positive impact on small business defense contracting. David Bodenheimer, a partner at law firm Crowell & Moring who leads the firm's homeland

⁸² Robert Gates; *Statement of the Secretary of Defense to the Senate Appropriations Committee – Defense Subcommittee*; June 9, 2009.

⁸³ Daniel Akaka; *Abusive Practices in Department of Defense Contracting for Services and Interagency Contracting; Hearing, before the Subcommittee on Readiness and Management Support of the Committee on Armed Services*, United States Senate; January 17, 2007.

⁸⁴ *Id.*

⁸⁵ George J. Tenet; figure declassified and disclosed in response to a Freedom of Information Act lawsuit; October 15, 1997.

⁸⁶ Steven Aftergood; *GAO Oversight Office at NSA Lies Dormant*; March 3rd, 2008.

⁸⁷ J. Michael McConnell; figure declassified and disclosed in compliance with section 601 of the "Implementing Recommendations of the 9/11 Commission Act of 2007," Public Law 110-53; October 30, 2007.

⁸⁸ Steven Aftergood; *Hearing on Government-Wide Intelligence Community Management Reforms*; testimony before the Committee on Homeland Security and Governmental Affairs, United States Senate; February 29, 2008.

security practice and specializes in government contracts, indicated that the unclassified portion alone of the federal government's cybersecurity work is estimated at \$6 to \$7 billion annually and the classified portion is likely larger.⁸⁹

VIII. CONCLUSION

Test Companies reveal that more so than with other federal agencies, small and minority companies are not able to score DOD contracts in the Fort Meade Region unless they are subcontractors to the large prime. These same Test Companies have prime contracts with Commerce, HUD, EPA, FDA, Labor and many more federal departments/agencies. For defense contracting, one Test Company states “I rely on subcontracting with large primes to survive.”

The core reasons that Test Companies are consistently challenged by the DOD contracting process are; contracting complexity, competition and resource (time, money and people) stamina. In the case of the Fort Meade mission, this complexity is further exacerbated by the classified nature of the mission and its effect on the contracting process.

The Pentagon’s new industrial policy guidelines call for the Defense Department to tap the commercial sector and niche small businesses for new technologies.⁹⁰ The 2010 Quadrennial Defense Review states, “[T]he vast majority of innovative and revolutionary components, systems, and approaches that enable and sustain our technological advantage reside in the commercial marketplace, in small defense companies, or in America’s universities.” A plus for small and minority businesses is that the QDR calls for establishing “requirements and pursuing specific programs that take full advantage of the entire spectrum of the industrial base at our disposal.”

It is not yet clear how DOD plans to go about implementing change to greater incorporate small business into defense contracting environment. While many Test Companies see the system stacked against small business, it should be noted they were appreciative of the many opportunities that do exist for contracting with DOD. As the BBI moves forward, the program will lend greater transparency to this defense contracting process and in doing so, enjoin leaders at all levels to respond to this environment, with a sense of commitment and understanding.

⁸⁹ Marjorie Censer and Tom Temin; *The Cybersecurity Boom*; [The Washington Post](#); May 10, 2010.

⁹⁰ Sandra I. Erwin; *Defense Contracting Methods Stifle Innovation*; [National Defense Magazine](#); April 2010.

Appendix I:

BBI Objectives, Scope, and Background

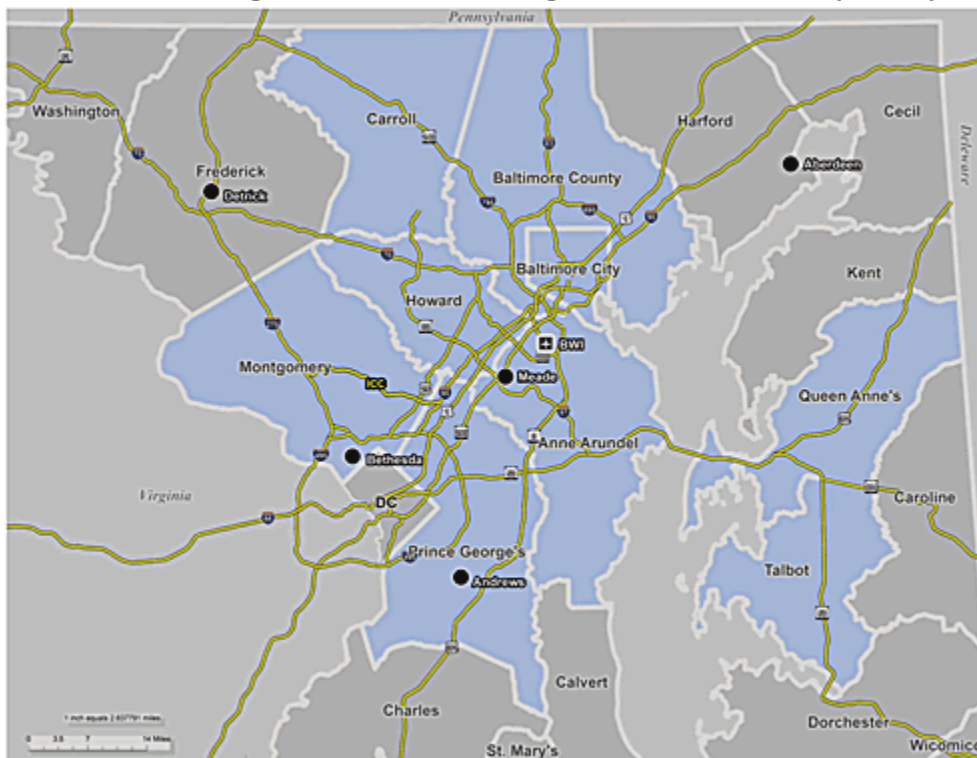
The BBI's primary focus has been to connect small businesses in the region with the expanded opportunities brought on by BRAC. In order to achieve this objective, the BBI staff determined that the current defense contracting environment needed to be more transparent. More facts and fewer anecdotes were needed by small businesses to complete effective business planning. To identify and document these facts, the BBI selected 20 Test Companies to go through a one year program, during which time, all that they did and all that they experienced was documented. Advisory Companies (Prime Contractors: SAIC, CyberCore Tech, Turner Construction), along with Sponsoring Agencies (DOD Agencies: NSA and DISA), created contracting "tracks" for BBI Test Companies. These tracks outline steps required to become a small business successful at defense contracting.

In addition to their work with the tracks, the general contracting actions taken by the Test Companies was observed and documented between January 2010 and June 2010. Below is a description of how the process started and how it was executed.

➤ **BBI BACKGROUND**

After the announcement of the Base Realignment and Closure (BRAC) action in 2005, the Fort Meade Regional Growth Management Committee (RGMC) was formed. The RGMC is composed of ten jurisdictions surrounding Fort Meade: Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Howard County, City of Laurel, Montgomery County, Prince George's County, Queen Anne's County, and Talbot County.

Fort Meade Regional Growth Management Committee (RGMC)



At its inception, the RGMC was tasked with identifying the impacts and opportunities that Fort Meade growth would bring to the region. Early in the process, growth of defense contracts in support of the Fort Meade mission was identified as a key opportunity for small and minority businesses.

The RGMC discovered that while large defense contractors were well resourced and positioned to act on growth at Fort Meade, many of the small, minority or disadvantaged businesses in the region were having a difficult time traversing the complexities of the defense contracting environment.

The RGMC developed an understanding of the consequences of this contracting environment on small businesses, but was unable to develop a set of sustainable actions for small businesses to take to improve their situation. This situation drove the need for action and in October 2009, under the staffing of the RGMC, Howard County Executive Ken Ulman, Congressman Elijah Cummings, and Howard Community College President Kate Hetherington established the BRAC Business Initiative (BBI).

➤ **BBI OBJECTIVES**

The core concept of the BBI is to identify and document the defense contracting environment of the Fort Meade region so that the conditions that define it are more transparent to the small and minority businesses that must function within it. This objective will be accomplished by tracking and documenting the actions of 20 small and minority businesses over a one year period (July 2009 to July 2010). These companies, which represent a cross-section of businesses in the RGMC, will be observed as they traverse the defense contracting environment.

Mission Statement

The BRAC Business Initiative (BBI) will actively engage in defining the environment, identifying the obstacles and documenting specific actions required by small businesses desiring to do work with the Department of Defense and/or with supporting contractors. The BBI will provide the small and minority businesses of the Fort Meade Region with a living “terrain map” that clearly illustrates the opportunities and the obstacles imbedded into the Fort Meade contracting environment

Vision Statement

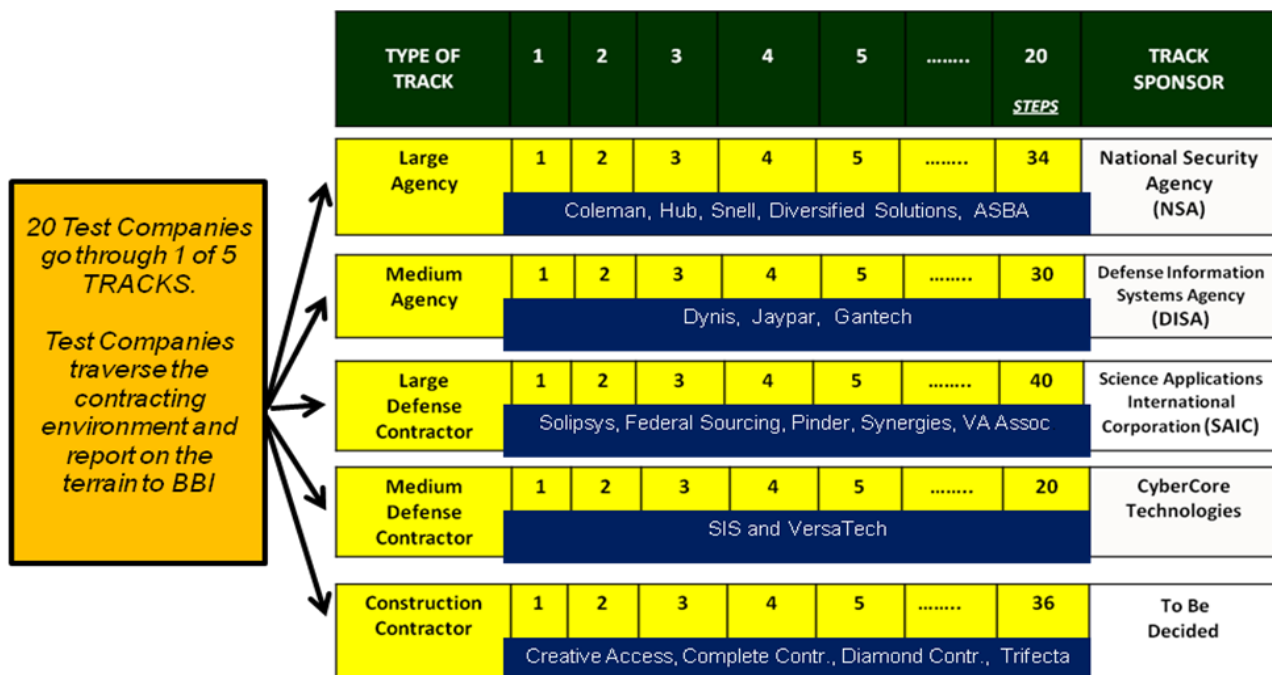
As a result of the BBI, the region’s small businesses are receiving a substantive portion of contracts from the Ft. Meade community. These businesses have access to the tools and resources they need to navigate the federal contracting environment. Both the federal agencies and their large prime contractors have a real commitment to small business and are making substantial progress in meeting their federally mandated goals (Small business, 8(a), etc.) They have assigned resources to this effort commensurate with their renewed commitment.

➤ **BBI GOALS**

1. **Goal:** Provide local, regional and state decision-makers with information on the Fort Meade Defense Contracting environment that will assist them in making fact-based policy decisions.
2. **Goal:** Increase the transparency of the Fort Meade related defense contracting environment.
3. **Goal:** Provide small and minority businesses with a process to assist their access to Fort Meade related contracting opportunities.
4. **Goal:** Identify the responsible advisory and supporting agencies/organizations; document the resources and methods they devote to small and minority businesses.
5. **Goal:** Develop a structured, disciplined regional networking organization consisting of all participating BBI companies.

➤ **BBI ORGANIZATION**

1. **Test Companies:** The role of the Test Companies is to work to obtain contracts from Defense Agencies and/or Defense Contractors in support of Fort Meade. This work will be conducted while the BBI staff documents their actions and experiences, to include contacts made, obstacles and best practices. Test companies were selected to represent a cross-section of the more than 10,000 small and minority businesses in Howard County and the region.
2. **Advisory Companies:** The role of the Advisory Companies is to provide the BBI with the benefit of their knowledge and best practices derived from their successful experiences in the defense contracting field. Selected Advisory Companies will sponsor BBI TRACKS that Test Companies will use to traverse the subject environment.
 - Large Federal Agency TRACK: NSA Sponsor
 - Mid-sized Federal Agency TRACK: DISA Sponsor
 - Large Defense Contractor TRACK: SAIC Sponsor
 - Mid-sized Defense Contractor TRACK: CyberCore Tech
 - Defense Construction Contractor: Turner Construction started, but has opted out. We are in the process of identifying a new construction contractor.
3. **Partner Companies:** The purpose of the Partner Company Group is to provide all small businesses in the County, the Region and the State the opportunity to receive BBI information as it is produced, participate in all BBI functions and form the core of a formal, structured BBI Networking Group. Additionally, the Partner Companies will act as an information resource and assist the BBI in documenting the contracting environment. As of April 2010, there are over 500 partner companies.



4. **Supporting Defense Agencies/Organizations:** Supporting organizations refer to all tenants on Fort Meade and those designated to move to Fort Meade, who contract with small and minority businesses. The National Security Agency and, the Defense Information Systems Agency are the first two tenants to directly participate in the BBI. These two organizations are TRACK sponsors. Each has furnished the steps that small businesses most traverse to “qualify” to do business with their respective them. As TRACK sponsors, they will respond to questions that their Test companies may have.
5. **BBI Networking Group:** This is a structured Networking Organization that currently consists of over 600 companies. Each member must submit contact information, a capabilities statement and the three products/services they buy and/or sell. This information goes into a data base that each member is able to access. Members are required to respond to communications from other members. Additionally, members will be supported with Fort Meade growth information, appropriate consulting, match making opportunities and meeting rooms, as required. The goal is simply to encourage members to do business, partner and exchange information with each other.

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